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Digital Transmission
Licensing Administrator

October 27, 2003

Rick C. Chessen
Associate Bureau Chief, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re Response of Digital Transmission Licensing Administrator, LLC to the *Ex Parte*
Submission of MPAA in the Matter of Digital Broadcast Copy Protection,
MB Docket 02-230

Dear Mr. Chessen:

The Digital Transmission Licensing Administrator, LLC ("DTLA") submits this letter, first, in response to the October 22, 2003, *ex parte* submission of the Motion Picture Association of America in the above-captioned proceeding and, second, as a supplemental answer to a prior inquiry concerning the process by which DTLA approves third party transmission and recording protection technologies.

Response to MPAA Ex Parte

In its Comments of December 6, 2002, DTLA urged the Commission not to promulgate Broadcast Flag regulations without concurrently authorizing a list of then-current (and then-future) technologies that would enable manufacturers to comply with the regulatory obligations:

[T]he MPAA companies have stated during the BPDG process that they believe that these four technologies [i.e., HDCP and DTCP for retransmission control and D-VHS and CPRM for recording] satisfy the jointly-proposed Criteria, and thus qualify for authorization on Table A. DTLA considers it critical that these technologies, and any others that meet the criteria, be authorized by the Commission before the remaining regulations come into force, lest regulatory obligations be imposed by the Commission without concurrently providing the marketplace with any means to comply with these obligations.

DTLA Comments at 11. DTLA continues to believe that this is the correct approach. Manufacturers cannot satisfy their obligations under the regulations, no less meet the inter-industry standard 18-month minimum timeframe for complying with new technical requirements, unless the Commission from the outset identifies technologies that industries can design to and deploy so as to create compliant systems. Unless the Commission identifies and approves "Table A" technologies, DTV products will have no way to transmit protected content between devices, e.g., from a DTV tuner box to a DTV monitor or from a DTV set to a recorder. The fastest and most direct route to such compliance is for the Commission to approve for redistribution control of DTV broadcasts those technologies currently used to protect high value audiovisual content in DTV products already within the home and personal network environment, and, as DTLA also has urged the Commission, to adopt criteria that ensure that other qualified technologies rapidly can gain Commission approval.

Prior public statements by the MPAA promoted this position as well. During the BPDG process, MPAA stated that it supported the use of DTCP to protect content marked with the Broadcast Flag. See BPDG Report, Tab C-2, <http://www.cptwg.org/Assets/BPDG/Tab%20C-2.doc>. Similarly, in Comments filed in this proceeding, MPAA (in a joint submission along with more than 20 other commenters) wrote: "Indeed, the technologies that MPAA member companies have thus far recognized as satisfying the criteria for Table A – DTCP, HDCP, CPRM, and DVHS – all allow secure digital transmission and recording within the personal digital network environment. We expect that future technologies will also satisfy the criteria in a similar manner." Comments of MPAA *et al.*, at 26 (December 6, 2002), see also "White Paper, A Proposal for Protection of Unencrypted Digital Broadcast Television," December 6, 2002, submitted as an attachment to the Comments of MPAA *et al.*, ¶ 3.1.3 at 4.

Importantly, these MPAA statements advocated Commission approval of the DTCP *technology*, without reservation or qualification, and were not limited to the use of DTCP in any particular context or over any particular interface. This unqualified statement of support for the DTCP technology was critically important to DTLA and its Adopters. DTLA actively promotes interoperability of DTCP over all types of DTV devices, whether based on CE or IT platforms, and the extension of DTCP to other interfaces. In this latter connection, the July 2001 Content Participant Agreement, signed by Warner Bros. and Sony Pictures Enterprises, identified several interfaces of interest to DTLA as to which DTCP might be mapped in the near term, and detailed "change management" procedures to ensure that the rights of those studios would remain protected via DTCP and under the agreement. See Content Participant Agreement, ¶ 3.7, available online at http://www.dtcp.com/data/DTCP_Content_Participant010730.pdf. Among those listed interfaces were MOST, Home PNS, Home RF, Bluetooth and 802.11.

As you know, DTLA recently announced the imminent availability of DTCP over IP, which would enable the secure transmission of content protected with DTCP over wired and wireless IP-based networks, including the several flavors of 802.11 "Wi-Fi." DTCP over IP has passed review by our Content Participants pursuant to the change management provisions of the Content Participant Agreement. DTLA distributed the draft specification to its Adopters in early September and, on October 21, DTLA met with its Adopters in Los Angeles to discuss any

additional questions or comments concerning the draft specification. DTLA anticipates that the DTCP over IP specification will be issued in final form in the very near future. Informational versions of that specification and related information are available at <http://www.dtcp.com>. Moreover, DTLA hopes to release within the next few months additional specifications mapping DTCP to other wired and wireless interfaces.

DTLA therefore was surprised and dismayed that the MPAA, in its October 22 *ex parte* letter, appears to be advocating that the Commission should consider “initial” or “interim” approval of DTCP on a platform by platform basis, and should freeze DTCP approval to only those outputs that had been “formally adopted” in the PHILA or DFAST licenses as of October 1, 2003. We hope that MPAA did not mean to oppose the use of DTCP-IP to protect marked DTV broadcast content. Nevertheless, DTLA opposes this or any proposed interim procedure that limits technologies on an output by output basis, for several reasons.

First, limited, interim governmental approval on a platform by platform basis is antithetical to the development and marketing of new technologies upon which the DTV transition depends. The availability of new outputs and new technologies drives interoperability among devices and competition among manufacturers, for the ultimate benefit of consumers. Wireless home networking among digital video devices will prove a tremendous boon to consumers. Any delay in deploying these technologies will only delay the offering of new and better DTV products for consumer enjoyment.

Second, manufacturers of DTV products that receive over the air content marked with a Broadcast Flag should not be required to limit their available outputs to those interfaces offered in cable set top boxes. Any such limitation is a prescription for stagnation at a time of rapid technological progress.

Third, MPAA provides no justification for imposing such technological limitations on the means of protecting DTV programming. Under the existing 5C licenses, manufacturers will soon be able to offer products that use DTCP-IP to securely distribute within the home network high value video content, such as pay-per-view, video-on-demand, subscription on demand, and premium subscription television programming. DTLA sees no reason why DTCP-IP (or other outputs that in the near future may use DTCP) should be approved and used to protect such premium services that deliver early-window content, but not broadcast television programming. In that regard, we note that the PHILA authorizes DTCP outputs for high-value content, without regard to the type of interface over which DTCP may be used.

Fourth, the proposed limitation is illogical and ineffective, in that it will not preclude protected content from transmission over a DTCP-IP home network through secondary outputs. Any DTCP-enabled sink device (*e.g.*, a DTV monitor or recorder with a 1394 input) that receives content from an “interim-approved” source device (*e.g.*, a tuner or set top box with a 1394 output) can redistribute the content along the home network using *any* DTCP protocol already standardized by DTLA (*e.g.*, DTCP-IP). These DTCP-enabled devices cannot, do not and will not employ “selectable output control” over the various DTCP-enabled output methods. In short, approving *any* DTCP output permits protected content to flow through *all* DTCP outputs – rightly

so, inasmuch as DTCP over every platform provides equivalent effective levels of robustness and protection. Similarly, we understand that the recording technologies that the MPAA proposed in its October 22 *ex parte* for interim approval also permit redistribution using any DTCP protocol. It therefore is pointless to prevent DTV source devices from using any DTCP-protected output.

DTLA therefore urges the Commission, in accordance with our initial Comments, to approve the DTCP technology generically, not on an interim or platform-by-platform basis. Moreover, DTLA requests that when the Commission promulgates regulations concerning the Broadcast Flag, it simultaneously provide the industries with both a list of technologies that can be used to satisfy those regulations, and a process whereby any new effective technology can be quickly and inexpensively approved to protect DTV content marked with the flag.

With respect to the timing for implementation of broadcast flag regulations, DTLA notes that, when DTLA changed its specification to require recognition of the EPN state (to control consumer redistribution of digital terrestrial broadcast programming retransmitted via a cable or satellite service), DTLA issued proposed specifications for comment by its Adopters and then, after finalizing the specification several months later, still granted its Adopters 18 months in which to implement the changes. Indeed, the DTLA Adopter Agreement provides for an 18-month implementation period for all specification changes. *See Adopter Agreement*, ¶ 3.3. This 18-month period traditionally has been viewed by the CE and IT industries as a minimum implementation period required to integrate new product requirements to a basic level of robustness.

Given that the proposed regulations here would impose requirements first to detect the broadcast flag, and then to protect marked content within devices prior to output, SC companies see no justification to depart from this industry-standard implementation time period, and agree with CEA's suggestion that a reasonable time for implementation would be no sooner than 18 months following adoption of the regulation. *See CEA ex parte* letter, October 16, 2003.

Supplemental Information Concerning Technologies Approved for Retransmission and Recording of Video Protected by DTCP.

As noted in our recent discussions with the Commission, DTCP is a "link" protection technology. DTCP protects audiovisual content over the transmission link from a source device to sink devices along the home network, and then "hands off" the obligation to protect the content to a different protection method for the next "link" within the sink devices. From one link to the next, these systems combine to achieve a seamless chain of effective protection.

Consequently, DTCP substantially relies upon interoperability with different protection systems used by the various devices along a home network. As with any networked technology, the economic principle of network effects applies. The more protection systems with which DTCP can interoperate, the more valuable DTCP, and those other systems, become.

From the outset, DTLA has made known its intention and desire to approve interoperation of DTCP with other technologies that can be used to securely redistribute and record content that

has been protected using DTCP. However, another well-known axiom affects this consideration, namely, that any chain is only as strong as its weakest link. DTLA therefore can only preserve the value and continuing utility of DTCP if it ensures that DTCP will hand off content only to those protection systems that will perpetuate, at an equivalent or greater level, the protections applied by DTCP.

Toward that end, DTLA has developed a set of criteria to be used in determining whether another retransmission or recording protection system will provide appropriate levels of security for content protected using DTCP. These criteria seek to determine, in essence, whether the other system offers at least equivalent protection in terms of technical attributes and licensing and robustness requirements. The criteria also inquire as to the level of support already gained for the technology from Content Participants, Adopters, and other content owners and relevant product manufacturers. While such support is not essential to approval by DTLA of a technology that possesses the listed technical and licensing attributes, substantial Content Participant and content owner support can compensate for shortcomings in any particular attribute, inasmuch as DTLA has no reason to object to a technology that is acceptable to those whose content is to be protected. For your reference, a copy of these criteria is attached to this letter. DTLA does not believe these criteria to be burdensome or difficult to meet, and thus far no technology vendor that formally has requested approval from DTLA has failed to meet the criteria.

DTLA does not impose any charge or costs with respect to this approval process. To the extent that technical specifications may be necessary to facilitate interoperability between the systems, SC company engineers work cooperatively with the technology vendor to develop any necessary specifications.

Using these criteria, DTLA approved in July 2001 three technologies: HDCP for transmission control, and D-VHS and CPRM for recording control. See http://www.dtcp.com/data/WDC99_461526_21.pdf. Recently, one other technology vendor group submitted a formal request for approval of their recording protection technology, and active evaluation of that technology is underway. We have received inquiries from other technology vendors, and have explained to each our interest in interoperating with additional technologies, and have sent our criteria to them. We expect and encourage other requests for approval in the future.

Should you or your colleagues have any questions concerning the matters covered in this letter, or any other matters relating to DTCP or DTLA practices, please feel free to contact me at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Seth D. Greenstein", written over a horizontal line.

Seth D. Greenstein
Chair, DTLA Policy Committee

Rick C. Chessen
October 27, 2003
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cc

Ms. Marlene Dortch
Secretary, Federal Communications Commission

**Statement of DTLA Objective Criteria for Reviewing
Recording and Retransmission Protection Technologies**

The DTLA Policy Group and Technical Group will engage in a review process designed to determine whether, from technical, legal and policy perspectives, a proposed recording or retransmission protection technology will maintain integrity and robustness for DT Data, and to consider whether Content Participants, certain other content owners and Adopters are satisfied with the level of protection provided by the technology and licensing framework. This review process is intended to be conducted by the DTLA using objective criteria, rather than subjective judgments, which criteria are set forth below.

I DTLA Review

A Policy Review

1 The proposed technology does not impair interoperability with respect to the exchange of DT Data among licensed products.

B Legal Review

1 The license agreement implements requirements that are no less stringent than the requirements of Exhibit B Part 1 Compliance Rules for Sink Functions, as set forth in the most current version of the DTLA Adopter Agreement, including with respect to maintaining the protection of DT Data through authorized digital, analog and high definition analog outputs, and prohibiting unauthorized retransmission of DT Data over wide area networks and the Internet.

2 If the technology so permits, the license agreement provides for a right of revocation or for renewability where the security elements of a particular device have been cloned.

3 The license agreement provides protections against the device interfering with a consensus watermark, in a manner no less stringent than the obligations set forth in Section 6 of Exhibit B, Part 1 Compliance Rules for Sink Functions in the most current version of the DTLA Adopter Agreement.

4 The license agreement imposes robustness requirements that are no less stringent than the applicable Robustness Rules as set forth in the most current version of the DTLA Adopter Agreement.

5 Legal recourse potentially is available in case of circumvention of the technology by persons other than licensees.

6 The license provides, or the licensor commits, that future amendments to the license that would affect the license terms and conditions that were disclosed to DTLA will not diminish the protections afforded to DT Data, as described above.

C Technical Compliance

The proponent of the technology should provide to the DTLA sufficient technical information to demonstrate that

1 The recording technology provides for detection and correct response to copy control information, as defined by the DTLA Specification (in EMI, Embedded CCI or both)

2 The recording technology provides for a means of security for the making of permissible copies, as set forth in Section 2 of Exhibit B, Part 1: Compliance Rules for Sink Functions of the most current version of the DTLA Adopter Agreement.

3 The recording technology provides that removable recorded media will maintain the required level of protection when played back on a device other than the device upon which the recording was made

II Content Owner and Implementer Support

1 In addition to meeting the above criteria, the proponent may provide to DTLA evidence of support for the technology and licensing terms and conditions from Content Participants and DTCP Adopters. In addition, the proponent also may provide to DTLA evidence of support for the technology and licensing terms and conditions from

a Motion picture companies that are members of the MPAA, in the case of technology used to protect audiovisual works,

b Major sound recording labels, in the case of technology used to protect only sound recordings, and

c Manufacturers interested in implementing both the proposed technology and DTCP

2 In the event that the proposed technology and licensing terms and conditions do not meet one or more of the requirements set forth in subsections B and C of Section I above, the proponent should provide DTLA with evidence of support for the technology from a substantial number of major motion picture or recording companies, as applicable.